

REMARKS

Claims 1-30 are pending in the application. Claims 1-18 have been cancelled. Claims 20-29 are amended herein and new claim 30 has been added. Support for new claim 30 can be found on pages 21-23. The amendments to the claims and new claim 30 in no way add new matter to the specification. As such, entry of the amendments and new claim are respectfully requested.

Election/Restrictions

The Examiner has maintained the restriction of the claims as indicated on page 2 of the office action. Concurrent with the filing of the present response, Applicants have petitioned for withdrawal of the restriction requirement as being procedurally improper. As such, all the claims, including the non-elected claims remain pending in the application.

Double Patenting

The Examiner has provisionally rejected claims 19-24, and 27-29 over claims 1-9 of co-pending application No. 10/451,728. Applicants respectfully request that under MPEP §804, the double patenting rejection be held in abeyance until either the present claims or those of the '728 application are otherwise allowable. The Examiner's attention is directed to MPEP §804, which instructs

If the 'provisional' double patenting rejections in both applications are the only rejections remaining in those applications, the examiner should then withdraw that rejection in one of the applications (e.g., the application with the earlier filing date) and permit that application to issue as a patent. The examiner should maintain the double patenting rejection in the other application as a 'provisional' double patenting rejection which will be converted into a double patenting rejection when the one application issues as a patent.
M.P.E.P. §804

Rejections under 35 U.S.C. §112, 2nd paragraph

Claims 19-24 and 27-29 are rejected under 35 U.S.C. §112, 2nd for being indefinite. More specifically the Examiner raises the following rejections for each claim.

The Examiner rejects claim 19 for the recited definition of "A" and "Q". Specifically, the Examiner objects to the fact that "A" can be a saturated or unsaturated 5- or 6- membered **heterocyclic** group and "Q" can be an optionally substituted **heterocyclic** group. The Examiner finds these definitions to be so broad as to render the claims indefinite. Applicants traverse this rejection and withdrawal thereof is respectfully requested.

The skilled artisan would readily understand the scope of the heterocyclic groups of claim 19, in view of the state of the art coupled with the inventive disclosure. Furthermore, a rejection to the breadth of the claims is inappropriate under 35 U.S.C. §112, 2nd paragraph. The Examiner is directed to MPEP §2173.04, which states,

Breadth of a claim is not to be equated with indefiniteness. *In re Miller*, 441 F.2d 689, 169 USPQ 597 (CCPA 1971). If the scope of the subject matter embraced by the claims is clear, and if applicants have not otherwise indicated that they intend the invention to be of a scope different from that defined in the claims, then the claims comply with 35 U.S.C. 112, second paragraph. MPEP §2173.04

The terms used in claim 19 are all common standard terms of organic chemistry. One of ordinary skill in the art would readily know the meaning of the terms and the resulting scope of the claims. As such, claim 19 is definite as written and withdrawal of the rejection is respectfully requested.

The Examiner rejects claims 20, 27 and 29 for recitation of the phrase "at least". Applicants have deleted this phrase from claim 20 and replaced "at least" in claims 27 and 29 with "one or more". Withdrawal of the rejection is respectfully requested.

The Examiner rejects claim 21, for the recitation of "Q" as C6-14 aryl claim 21. Specifically, the Examiner asserts that this moiety of Q lacks antecedent basis in claim 19. Applicants have amended claim 21 at line 2 to replace the phrase "wherein Q is;" with "wherein Q is said optionally substituted hydrocarbon group and said optionally substituted hydrocarbon group is". Withdrawal of the rejection is respectfully requested.

Claim 22 has been rejected for not reciting that the pharmaceutical composition contains a pharmaceutically acceptable

carrier. Claim 22 has been amended to recite the presence of a pharmaceutically acceptable carrier as requested by the Examiner.

Claim 23 has been rejected as being unclear and the Examiner suggests that claim 23 be amended at line 3 by inserting the term "therapeutically" before the term "effective". Claim 23 has been so amended along with claim 22.

Claim 24 has been rejected for recitation of "-X=". The Examiner has taken the position that the "=" denotes a double bond. To clarify this issue line 5 of claim 24 has been amended to replace the phrase "wherein -X= is -CH= or -N=" with "wherein X is CH or N". Withdrawal of the rejection is respectfully requested.

Claim 28 has been rejected for failing to recite the administration of a "therapeutically effective amount" of the pharmaceutical composition of claim 27. Claim 28 has been amended as suggested by the Examiner. Withdrawal of the rejection is respectfully requested.

Claim 29 has been rejected for being drawn to a crystal of the compounds of claims 24-26. Claim 29 has been amended to clarify that the "compound" of the crystal is that of formula I', formula I'', or formula I'''. .

As the above-indicated remarks and amendments address the rejections of the claims, withdrawal of the rejections and allowance of the claims are respectfully requested.


If there are any questions regarding the present application, the Examiner is requested to please contact MaryAnne Armstrong, PhD (Reg. No. 40,069) at (703) 205-8000.

Applicants respectfully request a one (1) month extension of time for filing the present response. The required fee is attached hereto.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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